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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,826	03/30/2004	Jim G. Ryan	764164605068(002)	5050
7590 Paul E. Franz, Esq. Jones Day North Point, 901 Lakeside Avenue Cleveland, OH 44114			EXAMINER LE, HUYEN D	
			ART UNIT 2615	PAPER NUMBER
			MAIL DATE 07/19/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/812,826	<b>Applicant(s)</b> RYAN, JIM G.	
	<b>Examiner</b> HUYEN D. LE	<b>Art Unit</b> 2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 29-31 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-11, 21-28 and 32 is/are allowed.
- 6) ☒ Claim(s) 12-14 and 20 is/are rejected.
- 7) ☒ Claim(s) 15-19 is/are objected to.
- 8) ☒ Claim(s) 29-31 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of claims 1-28 and 32 in the reply filed on 4/12/07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 12 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Langberg (U.S. patent 4,985,925).

Regarding claim 12, Langberg teaches an electronically-implemented method of determining whether a hearing instrument is removed from or inserted into an ear canal of a hearing instrument user. The method comprises monitoring the level of acoustic energy radiated by the hearing instrument (figures 2 and 6), monitoring the level of acoustic energy received by the hearing instrument in response to the acoustic energy radiated by the hearing instrument using a microphone (18, 31), comparing the level of acoustic energy radiated by the hearing instrument to the level of acoustic energy received by the hearing instrument, determining whether the hearing instrument is inserted into the ear canal or removed from the ear canal as

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claimed (figures 2 and 6 and see col. 3, lines 58-63), and controlling power consumption or acoustic gain of the hearing instrument as claimed (col. 4, lines 1-3).

Regarding claim 20, Langberg teaches a hearing instrument that comprises means for monitoring the level of acoustic energy radiated by the hearing instrument (figures 2 and 6), and a microphone (18, 31). The microphone (18, 31) is positioned to receive acoustic energy from inside of the occluded ear canal of the hearing instrument user and to monitor the level of acoustic energy received by the hearing instrument in response to the acoustic energy radiated by the hearing instrument (figures 2 and 6 and see col. 3, lines 58-63).

Langberg further teaches means for comparing the level of acoustic energy radiated by the hearing instrument to the level of acoustic energy received by the hearing instrument as claimed (figure 2).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langberg et al. (U.S. patent 4,985,925).

Regarding claims 13-14, Langberg does not specifically teach the monitoring steps that take place at various frequency bands as claimed in claims 13-14. However, it would have been obvious to one skilled in the art to provide the Langberg system that can monitor in various

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frequency band within a hearable frequency range from 20 Hz to 20 KHz such as monitoring the hearing system over a stable band differential corresponding to a frequency band defining a lower frequency and upper frequency that is less than or equal to 10 KHz for providing the improved frequency characteristics to the system.

***Allowable Subject Matter***

6. Claims 1-11 and 21-28 and 32 have been allowed.
7. Claims 15-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SINH TRAN can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



HL  
July 7, 2007

  
**HUYEN LE**  
**PRIMARY EXAMINER**